SECTION VI
MCPD'S RELATIONSHIP WITH OTHER JUSTICE SYSTEM STAKEHOLDERS

INTRODUCTION

The Maricopa County Public Defender's Office is part of a larger, interdependent justice system composed of multiple agencies and programs. As a result, MCPD's planning and improvement efforts affect and are affected by all the other organizations in the justice system. For example, in order to understand the MCPD's capacity to deliver services, the demands placed on it, and the elements that might be included in a set of improvement strategies, we also need to have some understanding about the operations of other agencies in the system. This chapter examines some of the key challenges other agencies in the justice system face, describes some of the joint problems the larger system needs to address, and offers recommendations for changes in case processing that we believe will improve the system.

BACKGROUND

The issue of case processing delay is a national concern and not limited to any one jurisdiction. This concern is reflected in the federal government's funding of hundreds of delay reduction projects around the country and in the American Bar Association's efforts to address delay by (1) establishing a standing committee on delay, (2) sponsoring delay reduction studies, and (3) developing model time standards governing the disposition of criminal cases. It is, therefore, not surprising that Arizona has dedicated more attention to this issue and in 1999, the Arizona Supreme Court converted Rule 8, the defendant's speedy trial rule, into a rule governing the disposition of cases regardless of the defendant's waiver of his or her speedy trial rights.

Delay is an important concern because, while it may work to the advantage of one side or another in individual cases, from a practical standpoint, it is a disservice to everyone involved in the criminal justice system. From a community perspective, the longer

most cases sit unattended, the more they cost the public in tax dollars.[39] From an agency perspective, delay is a drain on the time and energy of justice system participants that might be better spent elsewhere. Finally, from a defendant's perspective, delay may prevent justice from being served. Thus, some people sit in jail whose cases are ultimately dismissed, while others are allowed to plead guilty to time served.

Maricopa County has a delay problem, a problem it recognizes and shares with other large urban jurisdictions. Many judges and staff in the Maricopa County Superior Court have labored for years to reduce delay with advice from and the assistance of the best consultants. This has resulted in the initiation of some major improvement efforts. Despite these efforts, however, delay has not been reduced and, in fact, the system seems farther behind than before. We believe that the local legal culture is at least partly at fault for the lack of progress in reducing delay; that is, the system has adopted a set of values and beliefs that frustrate delay reduction. A significant contributor to delay is the lack of systemic frontloading, e.g., the long early period without substantial work on the cases by the entire Superior Court system. Another example of how the culture maintains delay in the system are the practices relating to trial readiness on the first trial setting. Most participants do not expect to go to trial on the first trial setting and so are rarely prepared to do so. Continuance requests are granted routinely to both sides, with the result that many cases do not plead out early and may not go to trial until the second or later trial setting.

The leadership of the court has instituted new processes to control continuances—a motion for a trial continuance will be heard by a judge drawn from a small pool of judges—but without a system-wide effort to promote trial readiness, it is unlikely this new delay reduction process will succeed. Many of the recommendations in this section identify means by which the entire Maricopa County criminal justice system should address barriers to counsels' readiness for trial.

[39] See "Dismissals on Day of or During Trial by Fiscal Year" showing exponential increase in dismissals over five years and indicating the potential benefits to be gained from improved front loading of the system (Exhibit B-9, Appendix B).

SYSTEMIC THINKING AND SYSTEM-WIDE DECISION MAKING

Delays in case processing are system-wide issues and thus need to be addressed systemically. This means that the MCPD, the Court, the MCAO and other agencies cannot pursue their own interests to the exclusion of the interests of the other important players. They must communicate and cooperate effectively with one another to craft solutions that will improve the system.

RECOMMENDATION 29

All Maricopa County justice system agencies should be involved in identifying issues and reaching decisions having significant system-wide impact in a collaborative and participatory manner.

The Maricopa County justice system has a long history of inter-agency discussion and joint efforts to resolve justice system problems. For the last ten years, the Maricopa County Justice Coordinating Committee (McJustice) has been the major forum for those discussions.[40] Although described as a collaborative body, there is some evidence to suggest it is not. Recently, for example, a national demonstration project that involved Maricopa County concluded that the County was one of the weakest jurisdictions in creating and operating a truly cooperative, effective system-wide policy level body. The project researchers concluded that the County demonstrated little real commitment to the process and failed to provide enough resources to make the attempts at collaborative efforts effective.[41]

We recognize that the justice system was designed to distribute power to each of the branches of government and that, consistent with the design of the system, conflict will naturally arise among the participating agencies. While conflicts of interest exist, however, interests can and do coincide and this creates the basis for collaboration and

[40] The McJustice *Newsletter* offers the following description of the committee's operations: "McJustice is a consortium of the major law enforcement and justice agencies in Maricopa County, Arizona (greater Phoenix area). McJustice Partners are dedicated to exploring problems and issues in the criminal justice system and collaborating on solutions from a system point of view. It has been in existence for ten years and meets monthly."

[41] P. Burke, et al., *supra*, note 1.

consensus decision making. We believe that McJustice is an appropriate forum for the discussion and resolution of key issues facing the justice system. We also believe that McJustice should reexamine its charge and operating principles and then take the steps necessary to ensure a fully participatory process that listens to and respects the views of all the parties.

Achieving better communication sometimes requires using outside experts. Fortune 500 companies often retain the services of experts who can suggest changes to improve cooperative decision-making. They can design and assist in implementing more effective means of interagency cooperation.

From our interviews, our examination of consultant and other reports, and our review of a sample of minutes from McJustice, we suggest the following:

- Membership in McJustice should be limited to the heads of each key criminal justice agency. (The McJustice membership should establish a policy about sending a designee in the event an agency head cannot attend, and what that person's role will be on McJustice.)

- Heads of other, non-member agencies can be invited to attend when an agenda item relates to their agencies' activities.

- Meetings should generally be quarterly unless the press of business requires greater frequency.

- The agenda should be prepared by a staff person dedicated to support McJustice. The agenda should be in the hands of the members at least one week prior to the meeting.

- Meeting time should be limited based upon the agenda items plus limited time for non-agenda items. Non-agenda items should be restricted to matters arising after the agenda was distributed.

The main business of the committee should be high level policy making and information sharing. Standing and *ad hoc*, working-level committees should be created to provide the information McJustice members need to support their decision making.

These working committees also could be charged with the responsibility to initiate and coordinate implementation of policy decisions.

If McJustice were to revert to an information exchange and consultation forum, a criminal justice committee consisting of the presiding judge of the criminal division, county attorney, public defender and a few others designated by them could be formed. This committee could meet regularly to jointly tackle such issues as delay reduction, front-end loading and fine tuning criminal justice processes.

RECOMMENDATION 30

Delay reduction should be the first issue the McJustice membership addresses.

Delay reduction should be at the forefront of the McJustice agenda. The Arizona Supreme Court has emphatically communicated its desire to require the Superior Court to meet case disposition time frames and the leadership of the Superior Court is unequivocally committed to complying with this mandate. Yet, delay reduction efforts will affect all criminal justice system agencies. For example, (1) pressure on the prosecution to deliver early and complete discovery to the defense may strain the relationship between law enforcement and the prosecution; and (2) the case preparation required to meet an early trial date may increase the need for prosecutorial and defense resources.

We offer the following recommendations for how McJustice could structure its decisions around delay reduction.

30a: McJustice should make recommendations to the Arizona Supreme Court that set realistic and appropriate case disposition time standards.

17 ARS Rules of Criminal Procedure, Rule 8.2, established the time frame from arrest or service of summons to trial. Adopted 25 years ago, it defines the defendant's right to speedy trial and secondarily—in the context of a defendant's speedy trial rights—addresses issues of judicial administration. Rule 8 Guidelines adopted by the Maricopa County Superior Court Criminal Department in 1990, state, "The time limits set forth in Rule 8.2 are obvious and designed to protect a defendant from undue post-accusation

delay, and provide a framework for both parties to the action a time framework for a relatively quick and, presumably, fair and just resolution of the matter."

After adoption of the speedy trial rule, the Arizona Supreme Court set standards requiring that 90 percent of criminal cases be completed within 100 days of arrest and 99 per cent within 180 days.[42] While not formally adopted, the standards have been used by the Supreme Court to assess trial court performance. Responding to a February 24, 1999 letter from the Chief Justice to the Presiding Judge, the Maricopa County Superior Court presented its delay reduction plan in the summer of that year.

Since our study's primary focus is the Public Defender's Office and the other parts of the justice system are only secondary, it is beyond the scope of this study to conduct a full case flow study. Thus, we relied on findings from a prior study by Ernie Friesen for that information. Our observation is that forcing the Maricopa County criminal justice system to comply with a defendant's speedy trial rule may cause massive dislocations and have serious unintended consequences given the way the current system is organized. For example, requiring compliance in out-of-custody cases may, and likely will, make greater compliance in in-custody cases more difficult.

The speedy trial rule is designed to protect the defendant's constitutional right to a speedy trial, which the defendant may, and in Maricopa County generally does, waive. While considerations of trial readiness are a factor, the speedy trial rule is not a rule of judicial administration. The Supreme Court's standards noted above are not directed to the defendant's right to a speedy trial, but to the efficient and effective use of the courts and the public's interest in the prompt disposition of cases. The parties cannot waive compliance with this standard. While there may be some overlap between Rule 8 and the Standards, the former should not be used to achieve the goals of the latter.

Case processing time standards have profound impacts on criminal justice agencies, especially in large, urban, and rapidly-growing jurisdictions. The judges, prosecutors, defender agencies and others at the local level have the knowledge needed to fashion time standards by virtue of dealing with the day-to-day complexities of local criminal justice processes. For this reason, we recommend a bottom-up approach to setting time

[42] These standards are more stringent than the American Bar Association's time standards.

standards. We believe the Supreme Court will seriously consider Maricopa County's recommendations in fashioning rules of procedure.

30b: The time standards should limit the time between events in the processing of the case to the amount of time needed to properly prepare for each event and no longer.

Complying with time standards from inception to trial and / or final disposition requires establishing intermediate time frames. The Maricopa County criminal justice agencies have established some intermediate time frames. For example, the MCAO has adopted a plea cut-off policy and the court has established a time line for the initial pretrial conference. Other polices require prosecutorial action shortly after arrest. These time frames may be workable as the court implements its efforts to comply with Rule 8. But these policies were adopted piecemeal and not as a systematic, systemic attempt to address delay.

Law enforcement needs time to provide the initial and supplementary reports to the prosecution. Both prosecutors and defenders need time to prepare for the next event in the case. The time allocated between stages in a criminal case should be adequate for all players to do what they have to do at that stage and no longer. The amount of time depends upon the complexity of the case; the workload, experience and skill of the lawyers assigned; and the unique attitudes and values of the local jurisdiction. For these reasons, we recommend a collaborative effort to establish and clearly define these intermediate milestones.

Even after a case is pled or tried, the system's attention to timely case processing is not concluded. While the defendant's right to a speedy trial is no longer a consideration, there are good reasons for establishing and monitoring the time frame from guilty plea or trial to final disposition. One is compliance with the Supreme Court's time standards for cases in the aggregate. Another is that delay in sentencing may mean more jail bed days at a cost to the County. The longer the case is actively in the system, the more time it must be closely monitored and the longer the file will stay open.[43] The court has

[43] The MCPD provided us with data indicating that although its attorneys handle the highest percentage of defense cases, they have the lowest percentage of cases more than 150 days old. See, e.g., "Analysis of Criminal Case Inventory of One Judge By Defender Type," Exhibits B-10, B-11, and B-12,

already addressed delay between the finding of guilt and sentencing with good results. The foundation for time frames based on the amount of effort required for the PSI report has been laid. Additionally, although we are recommending the establishment of standards and guidelines, we emphasize that justice requires individualized consideration of each case and each procedure.

30c: In developing the time standards, McJustice should consider shorter time standards for in-custody cases and longer time standards for out-of-custody cases.

The custodial status of the defendant is traditionally a major factor in setting time standards. This is particularly salient today given rising rates of pre-trial incarceration and the increasing authority of the state to detain a defendant without bond. There is, however, a limit to the speed at which the prosecution can prepare a case for trial. The pre-trial incarceration in misdemeanor and lesser felony cases may be, and often is, longer than the sentence. Probation is frequently the penalty in such cases. Typically these lesser felonies and misdemeanor cases take less prosecutorial effort to make trial ready. Accordingly, the time to disposition can be shorter. The defendant can waive this right, but in doing so there are considerations why the time standards should require reasonably prompt disposition despite a waiver. Extended local incarceration increases jail costs. The longer cases are in the system, the greater the number of court appearances, with a concomitant drain on resources for all system participants.

Since it can take more resources for the prosecution and defense to push a case to trial quickly and since the resources of these agencies are usually limited, the time standard for out-of-custody defendants should, as a general rule, be more relaxed. Thus, an assessment of the capacity of the relevant justice system agencies to prepare the out-of-custody case is warranted.

Appendix B. The inference to be drawn from these data may be tempered somewhat by the possibility that while other defense counsel have a very high percentage of the oldest cases, they may also have a greater percentage of the most difficult cases.

30d: McJustice should design a program to implement the case disposition time standards that is phased in over a period of time and uses pilot projects to refine implementation. The outcomes from the pilot should be monitored and evaluated.

The court has a long history of implementing innovative practices and procedures to improve operations. Far from being a stranger to change, it embraces it. The court must, therefore, take a leadership role in working with its justice system partners to design and implement a pilot program that has support from all the key agencies. Once committed, the participants must be willing to adhere to the design features for the period of the pilot program.

For the purpose of accountability, time standards must be capable of being monitored. This monitoring must take place at two levels: each individual case before each judge and all cases in the aggregate. The Supreme Court's current standards measuring the percentage of cases disposed at 100 and 180 days assesses the performance of the court as whole, but not the actions of each judge. Monitoring each case makes individual judicial accountability possible.

ELIMINATING BARRIERS TO TIMELY CASE PROCESSING

RECOMMENDATION 31

All Maricopa County justice system agencies should continuously identify and seek to eliminate barriers to the fair and early disposition of criminal cases.

One of the founders of judicial administration, Chief Justice Vanderbilt of the New Jersey Supreme Court, reportedly said, "Court reform is no sport for the short winded." Organizational and systemic change do not come easily and gains can quickly disappear without continuing scrutiny by all those involved.

Below, we offer some recommendations we believe will help Maricopa County achieve fair and early disposition of criminal cases. Some of the changes we recommend are largely internal to one or another of the justice system agencies, but we believe all of

them will ultimately improve the organization's ability to do its part to achieve compliance with Rule 8. Other changes we recommend are more systemic.

Regardless of what changes are ultimately implemented, we encourage Maricopa County to assess the impact of the change. In any environment, the natural inclination after implementing an improvement strategy is to assume that the strategy has solved the problem. In the spirit of continuous quality improvement, however, we stress the need to define unambiguous performance measures for the strategy, establish a monitoring system to ensure the strategy is being implemented as planned, and continuously assess the impacts of the strategy on outcomes. The assessment should identify cases not meeting intermediate time standards before the deadline for the particular action has occurred.[44]

31a: A permanent work group that is truly representative of the justice system should be established to create an effective system to disseminate accurate, complete discovery promptly.

Despite the court's implementation of Initiative 7 of the Comprehensive Plan, which seeks to improve the resolution of discovery disputes, the people we interviewed saw discovery as a barrier to achieving more timely case disposition. There appear to be obstacles to sharing information more quickly that are not the fault of any one agency. We believe this would be an ideal issue for a cross-agency work group to investigate and develop approaches to information sharing that accommodate the needs of all the parties involved.

Maricopa County has a history of using work groups successfully to address multi-agency issues and obstacles in the criminal justice system. This observation was supported by the people we interviewed and by the authors of the *Interim Criminal Justice System Assessment Report* cited earlier.

31b: The MCAO should make greater efforts to provide automatic, early and complete discovery. The MCPD should continue its efforts to secure discovery that is not forthcoming. The court must

[44] See Initiative 17 of the Court's Comprehensive Plan for Criminal Case Management.

consistently and firmly enforce discovery rules.

This recommendation is a corollary of the previous recommendation. Regardless of what decisions are made by the work group charged with responsibility to develop approaches to sharing discovery information, the various justice system agencies need to be vigilant to ensure that discovery is forthcoming and made available to the County Attorney and the Public Defender in a timely manner.

31c: Starting times for morning calendars within a quad should be staggered to reduce attorney conflicts and ending times should guarantee a minimum of five hours of trial time.

Obviously, the more courtrooms an attorney must cover, the greater the likelihood that scheduling conflicts will occur. By extension, when attorneys have individual case assignments and limited ability to delegate authority to other counsel when scheduling conflicts arise, court downtime is likely to occur. Despite their skill and conscientiousness, many judges reported significant downtime due to conflicts, which in turn hindered their ability to move cases forward expeditiously.

Currently, the court has adopted a starting time of 8:30 a.m. We were told that many courts do start at the appointed hour, but that some start as late as 9:30 a.m. We recommend that starting times be staggered to reduce scheduling conflicts. The determination of appropriate starting times should be the subject of consultation and collaboration among the agencies directly affected.

The court took a major step in reducing the volume in the morning session to ensure a minimum of five hours of trial time daily. Staggered calendars should not mean abandoning this improvement. However, we expect that five hours of hearing time (with breaks) is probably the maximum for typical jurors to remain effective based on research on attention span conducted in educational settings.

31d: The MCPD and MCAO should modify their attorney assignment systems to minimize calendar conflicts.

Cases in the Superior Court are assigned by quads. Cases transferred to the Superior Court from the Justice Court after preliminary hearing are assigned by quad and indictments are used to balance case assignments for judges in the quad. An attorney can be scheduled in at least four courts at the same time. The recent restriction in the number of judges who can grant continuances, the increased use of settlement conferences (which are being heard by a handful of judges), and the proliferation of quasi-judicial officers has increased the number of courtrooms in which a lawyer is required to appear.

One solution to this problem is to assign lawyers solely to one or two judges per quad. This approach could potentially reduce attorney scheduling conflicts. It might also increase attorney-judge personality conflicts, however, when they have to work together all the time. Certainly, the authority to notice a judge without cause can provide a relief valve for personality conflicts, but it also makes operating a one-judge individual assignment plan more difficult.

31e: Consideration should be given to assigning cases to a Superior Court judge when the initial complaint is filed in the Clerk's Office or as soon as practical thereafter.

There is currently a long delay between case initiation and arraignment in Superior Court. No one is in a position to move and monitor cases during this period. Assigning cases (and Superior Court case numbers) at filing would allow closer and more efficient tracking of case progress, but it also would require additional administrative effort to balance caseloads after activity in the Justice Courts. If the number of cases going to Justice Courts were reduced, balancing case assignments would be less difficult.

31f: Each judge should be held accountable for the disposition of all cases in the judge's division within the time standards. Similarly, all judges in each quad should be held jointly responsible for the timely disposition of all cases assigned to that quad.

In the last two years, the court has undergone significant reorganization, including readjusting the quad system. At the appropriate time, we suggest that the court

consider modifying the quad system and move toward an individualized case assignment system. (The pure individual calendar assigns cases at the time of filing with the assigned judge responsible for the case until final disposition.)

Regardless of whether the court retains the existing quad system or implements full individual calendaring within a quad organization, each judge in the quad should be available to assist other judges in the quad. The court, with financial assistance from the County, is experimenting with quad coordinators to more effectively move cases from one court to another.

Like other consultants who have studied the justice system in Maricopa County, we believe expansion of the differentiated case management (DCM) system would reap significant benefits for all justice system agencies. The Early Disposition Court and Drug Court are forms of DCM. The typical case processing and time frames to disposition of capital cases are another. An expanded DCM system would differentiate further among cases based upon such factors as the resources required to close them or the custodial status of the accused.

Specialty courts have their supporters and detractors. Their supporters point to the benefits of specialization and the convenience to support agencies who can concentrate resources in a more limited number of courtrooms. Detractors say that there is a tendency for specialty courts to be less impartial and to routinize case processing. Applying DCM in courts of broader jurisdiction requires greater leadership from the court and cooperation from the bar. Past experience demonstrates the feasibility of DCM, where the lawyers are primarily government employed and their senior policy makers agree to implement DCM. The private bar rarely has the degree of organizational accountability public offices display.

We are not recommending that the justice system consider expanding DCM immediately. In fact, given the magnitude of the challenges the system faces in trying to meet the conditions of Article 8, this may not be the right time to expand DCM. It is something to consider as a possible future improvement.

31g: The MCPD and the MCAO should have an informed coverage attorney to provide case information at every calendar call.

During our interviews, some judicial officers complained that there were too many instances when there was no one from the Public Defender's Office and sometimes from the County Attorney's Office with adequate knowledge of the cases on the calendar for that session. Coverage attorneys should be available and have enough knowledge about the case to advise the court in routine matters.

31h: The MCPD and MCAO should consistently provide experienced attorneys to mentor inexperienced trial attorneys.

Both the MCPD and MCAO have high staff turnover rates, which means that there are many new attorneys trying cases. In our opinion, both offices should provide experienced attorneys to educate and directly supervise their new lawyers. This may be difficult because the high turnover rate places additional burdens on the attorneys who remain. Therefore, it may be unrealistic to expect the experienced attorneys both to mentor new attorneys and handle a full caseload without an infusion of additional resources.

We understand new lawyers may try their first case with a supervisor assisting and that the MCAO has a detailed policy manual to guide the actions of new prosecutors. Nevertheless, inexperienced lawyers may be reluctant to do what an experienced lawyer would consider obvious; they will be cautious to avoid making a costly mistake. Accordingly, we believe more supervision is needed than we understand is being provided. We hope that through more and better supervision, new lawyers will gain sufficient confidence and become more efficient so that the court can eventually meet the Rule 8 deadlines.

In our recommendations for improvements in the MCPD, we suggested reorganizing the Office to reduce the span of control and thus allow opportunities for more direct education and supervision of new attorneys. We also recommended that the MCPD consider other incentives—higher salaries and a clearer career ladder—to help reduce staff turnover. Based on our interview findings, we believe that the MCAO allowing their attorneys greater individual discretion would help reduce turnover.

Finally, a few judicial officers complained to the team about discourteous conduct, such as lateness, among less experienced public defender attorneys. A few of these judges had brought this to the attention of the MCPD; some of these judges were satisfied with

the MCPD's response, others were not. Since these remarks were brought to the atttention of MCPD, they have taken steps to provide greater oversight to its lawyers and minimize inappropriate conduct.

31i: Early appointment of the Public Defender to a case should become the practice. The MCPD should have the resources necessary to permit the attorneys to interview defendants prior to or at the initial appearance hearing.

31j: The MCAO's charging attorneys should consult with and, in selected cases, take sworn testimony from the victim and police officer most familiar with the case prior to making a filing decision.

31k: After consultation with other justice system agencies, the frequency of initial appearance sessions should be studied to reduce their number and to allow for meaningful preparation and participation by the MCAO, MCPD and Pretrial Services so that the remaining hearings can become more substantial.

31l: The MCAO should give greater discretion to its attorneys to negotiate pleas and simplify its internal plea review process.

This group of four recommendations seeks to move the system from what could be termed back-end loaded to front-end loaded. The present system is back-end loaded, as illustrated by the following findings:

- An impression from many of our interviews and a review of trial statistics suggest that counsel are not getting fully trial ready until it appears there is a serious possibility that the case will be tried. This may be a form of triage, particularly for the defense, given what the public defender attorneys see as lack of early attorney assignment and early client contact, inflexible plea policies, and the absence of early and complete discovery.

- On the prosecution side, the deputy county attorney at the preliminary hearing, who may have interviewed the victim or officer, will not handle the case at trial. It is unlikely that the charging attorney has interviewed either the victim or the officer. Indeed, from what we could determine, the first time an experienced prosecutor

assigned to the case has a face-to-face witness interview is typically long after the case is filed.

A front-loaded system would have:

- Earlier assignment of counsel. Earlier assignment of counsel should result in earlier intervention, fewer gaps in case processing (i.e., time during which the cases are dormant), and more expeditious case resolution. In the current back-loaded system, the trial attorney typically is not assigned until arraignment, weeks after arrest. When defender attorneys are assigned to individual judges, early appointment and assignment of counsel can only be effective if the cases have been assigned to a specific judge and given a case number.

- Early attorney-client contact. Early and meaningful attorney-client contact is especially important in a front-loaded system, something that apparently is not happening in the present system. For example, many interviewees complained that courtrooms are being used for client interviews, both for in-custody and out-of-custody defendants. When we asked why interviews with in-custody clients were not conducted in the jail, some defenders cited difficulties in visiting clients there, difficulties that also are recognized in the 1997 Jail Study.[45] Out-of-custody defendants present different client contact problems, but lead to the same result: interviews in the courtroom or in the hallway.

  Defender-client contact is not just a defender problem; it is a system problem. The court, the sheriff and the prosecution can and should be involved in the solutions. Scheduling a court session a half hour before the judge takes the bench, has been an effective solution in some jurisdictions. This allows counsel a short time to meet with clients in the hallway and negotiate pleas prior to the appearance before the judge.

- Early and effective case screening by counsel. The MCAO should interview a sufficient number of witnesses to make an informed filing decision much sooner than is now the case. Forty-eight hours from arrest may be sufficient in some cases,

[45] *Maricopa County Criminal Justice System Planning – Final Report* (October 1997).

but not in others. Implementing this recommendation most likely would have to be phased in over time and would require detailed study. This issue was outside the scope of our study.

- Set a first trial date. It is useful to set a firm first trial date at the Initial Pretrial Conference along with a plea cut-off date. However, such a practice works only if (1) discovery is complete, (2) defense counsel has conferred with the client, (3) the plea offer is somewhere in the range of acceptability to the defense and court, (4) the trial court has communicated its expectations that the parties will be ready for trial, and (5) the court is open to help counsel get trial ready. The current system does not meet these conditions.

- Expanded sanctioning options. The criminal justice system needs a continuum of effective sanctioning options (e.g., a full range of high-quality diversion programs) available that are short of outright dismissal. A fully funded pretrial services agency will safely reduce the average length of detention for many defendants and relieve the pressure the system faces when dealing with incarcerated defendants.[46]

ROLE OF THE JUSTICE COURTS

The appropriate role of the Justice Courts with respect to felony case processing was a major issue of discussion in our interviews and of our investigation. Like other consultants before us, we are concerned about the utility of and costs associated with maintaining the current system of felony case assignments to the Justice Courts.

A 1997 report assessing the need and developing a master plan for criminal justice detention facilities recommended several options for dealing with felony cases.[47] One was to file all felony cases directly at the Superior Court. Another option was to centralize most of the Justice Courts into four locations, although this raised concerns about cost (over $21 million in construction costs) and the reduction of the community presence of the Justice Courts. Despite these concerns, it is useful to recite the benefits of consolidation listed in the report.

[46] *Ibid.* and P. Burke, et al., *supra*, note 1.

[47] *Supra*, note 45.

- Increased Justice Court staffing efficiencies;
- Reduced travel to the Justice Courts would significantly aid the staffing levels of the MCAO and MCPD;
- Reduced transport of inmates would enhance public safety; and
- Would help maintain the current average length of jail stay of 20.9 days, which would reduce the projected need for new jail beds by 1,820 beds and thus save approximately $26.6 million in jail operating costs.[48]

RECOMMENDATION 32

If authorized, the MCAO and the court should promote the direct filing of information without preliminary hearings. If not currently authorized, the MCAO should define and follow more limited criteria for presenting cases at preliminary hearing in the Justice Courts and use the grand jury more extensively.

In developing our recommendation, we reviewed a considerable amount of data and attempted to quantify the savings and costs associated with transferring all felony case processing to the Superior Court. We were not completely successful. For example, it was not within the scope of our project to conduct a study to determine the prosecution and defender attorney time and mileage costs spent in travel to and from Justice Courts. We did, however, make some estimates.

Court Transport Unit

Unlike transports to the Justice Courts, transports to the Superior Court involve significantly less travel per transfer. In 1997, 66 staff were assigned to the Court Transport Unit and the jail master plan consultants recommended adding 11 more. Reducing Justice Court hearings would decrease the number of new hires the consultants recommended, although we do not have accurate current data to know precisely what that reduction would be. Thus, we recommend that, if there are still questions about the need for alternatives to Justice Court felony hearings, staffing of the Court Transport Unit be included in an overall effort to accurately assess total system costs of using Justice Courts for felony case processing.

[48] *Supra*, note 45, Volume II, Section IV-3.

Public Defender's Office

The MCPD, using a primarily vertical attorney assignment system, estimated that each lawyer spends an average of one day per week in travel and court time to attend Justice Court hearings. Not estimated was the effort required of MCPD support staff to facilitate the Justice Court hearings. Data were compiled and analyzed from a 1997 study of Justice Court attendance by public defender attorneys. The study examined court attendance by lawyers from four quads. The equivalent of 16 full time public defender attorneys attended these hearings. A reasonable annual estimate of cost per attorney, including salary, fringe benefits, overhead, and supervision costs, is $100,000 for a total of at least $1.6 million. We were told that two more court locations have been added since the study and that Justice Court caseloads have increased. MCPD and MCAO costs should be part of the overall study of Justice Court.

The MCPD is experimenting with modifications to the attorney assignment system for Justice Court matters. The modified horizontal system they are now trying may somewhat decrease the cost estimate.

County Attorney's Office

The MCAO assigns to Justice Court hearings lawyers whose sole responsibility is to handle all or a large portion of those cases, rather than the individual assignment system traditionally used by the MCPD. By dedicating staff to this work, we assume the prosecutors spend less time traveling to and from the Justice Courts than defenders, but we have little quantitative information to support that assumption.

The MCAO's costs are also likely to be somewhat lower than the MCPD's because while the MCPD sends experienced lawyers to handle Justice Court hearings, the MCAO assigns new lawyers to those hearings. Again, we lack data to estimate the total dollar costs of MCAO representation at Justice Court preliminary hearings. If the costs approach those of the MCPD, however, we believe they could translate into the full-

time equivalent of 12 or more prosecutors at an annual cost of $1.2 million exclusive of staff support.

Case Processing

From our interviews, we learned that the MCAO is using the preliminary hearings in Justice Court as a training ground. Preliminary hearings differ radically from Superior Court hearings and trials. For example:

- Preliminary hearings allow ready use of hearsay to establish the elements of the offense and the identity of the defendant as the guilty party.
- The burden of proof in preliminary hearings is probable cause, while in criminal trials it is beyond a reasonable doubt.
- Preliminary hearings are presented with little or no preparation, while presumably that is not the practice in Superior Court trials.
- In Justice Court, non-lawyer judges, not juries or lawyer-trained judges, make the decisions.
- In preliminary hearings, we were told, the defense is precluded from full cross examination of the few witnesses the prosecution puts on the stand.

One danger we see in using inexperienced attorneys to learn their craft in Justice Courts is that the attorneys may acquire bad habits that they continue even in the Superior Court. The MCPD and the MCAO should take this into consideration in determining appropriate supervision for the inexperienced attorneys they assign to the Justice Courts.

Most preliminary hearing cases are not resolved in contested hearings. The 1997 Criminal Justice System Planning Final Report estimated that in over 90 percent of the cases the defense waives the preliminary hearing.[49] Some cases are pled, and other cases are dismissed. Of those pled, about 30 percent of the plea agreements reached at Justice Court did not survive until they reached the Superior Court level. We were told in our interviews that neophyte prosecutors had little discretion to fashion plea

[49] *Supra*, note 45, p.16.

agreements and that many were "hanging tough" to establish their reputations as no-nonsense prosecutors.

The 1998 Criminal Justice Assessment Project report recommended major changes in Justice Court proceedings to make them more meaningful. Specifically, the authors concluded their analysis of Justice Court preliminary hearings as follows:

> Overall, the process is time consuming and—except for those cases in which a plea agreement is reached at the time of preliminary hearing (about 23 percent of total Superior Court filings)—appears to do little to catalyze the resolution of cases.[50]

Alternatives to Justice Court Hearings

The basic alternatives to preliminary hearings are direct filing or presentation to the grand jury. In either option, the prosecution has an opportunity to evaluate its witnesses' credibility. States, such as Florida, have used direct filing for most of this century. The common practice in those jurisdictions is for the prosecutor to take sworn testimony from the victim and/or the investigating detective. The prosecutor learns about the case in the quiet of an office and on the record instead of relying upon a police report or a hurried conversation in court or in the hall.

Beyond direct filing, the existing grand jury capacity could easily be expanded to cover the volume of cases now going to Justice Courts. After consultation with court administration, we concluded that the costs of adding additional panels and acquiring additional court space was not burdensome. Our preliminary estimates of those costs are discussed below.

- Grand Jury hearings. The additional costs of convening grand jury hearings for the 18,000 cases currently heard in Justice Courts will be about $1.1 million per year. Each grand jury now meets two days per week and hears about 1,000 cases per year; thus the Superior Court would need to convene an additional 18 panels to cover 18,000 cases.

[50] *Supra*, note 4, p.16.

- Grand jury staffing. The six existing grand jury panels require three staff from court administration and two clerks. By extension, 18 additional panels would require 15 additional staff, although this does not consider any economies of scale that would likely exist. Salary and fringe benefits for 15 staff average $35,000 per person per year; a total of $525,000.

- Office space. Office space requirements for 15 new staff would be 1,875 square feet (125 square feet per person). Total projected costs at $20 per square foot are $37,500.

- Meeting space. The six existing grand juries use two meeting spaces per week. Thus, 18 additional grand juries will need six more spaces per week. (Returns could be in a courtroom or one of the jury spaces could have additional space for a bench and court reporter's work station.) Meeting space for 18 additional grand juries would be 2,400 square feet (400 square feet per space times 6). At $20 per square foot, the meeting space cost becomes $48,000 annually.

- Juror pay and travel costs. Juror pay and travel costs about $181,000 per year. The new panels would add another $543,000 per year. About 9,000 jury summonses are issued annually at a cost of $2 to $3 each to fill the grand jury panel. The additional 27,000 jury summonses required to fill 18 new panels would cost $81,000 annually at the higher $3 cost.

Summary of Additional Costs

Cost Item	Amount
Added staffing	$525,000
Office / jury space	$85,500
Juror pay and travel	$543,000
Summonses	$81,000
TOTAL	**$1,234,500**

The conclusion from these data is that the additional costs of empaneling 18 more grand juries is far less than the existing costs for MCPD and MCAO attendance at the Justice

Court preliminary hearings. If we include defendants' jail costs and the costs of transporting them to and from preliminary hearings, the savings associated with prosecution by indictment are substantial.

County population projections suggest that the criminal justice system will need more staff in the near future just to maintain current performance levels. If there is an economic downturn, which is typically associated with higher levels of criminal activity, we would expect the demand for more criminal justice resources to be even greater. Using direct filing of felony cases in the Superior Court and/or prosecution by indictment would require a redeployment of existing staff, but would likely reduce the future projections for additional lawyers, correctional officers, clerks, and other support staff.

Justice Court Workloads

If Justice Courts are to remain community courts, they must stay in their communities rather than being consolidated into regional centers. Experience in other states (e.g., Florida) has shown that professionalizing and centralizing Justice of the Peace Courts negatively affects citizens' perceptions of the courts as community courts. Many reasons support leaving the Justice Courts as they are, the biggest one being that there is lots of work for them to do, even if their jurisdiction over felony cases ended.

- Over 26,000 criminal traffic cases, over 7,000 traffic failure-to-appear cases, almost 4,000 misdemeanor (non-traffic) failure-to-appear cases were filed in the Justice Courts in 1997.

- Recently, the civil jurisdiction of the Justice Courts was significantly expanded. These new cases may well be more complex, require more pre-trial preparation and will present new challenges for the Justice Court judges.

Ultimately, we concur with the recommendations of most people we interviewed that reform of the current approach to case processing is not enough and that most felony cases should not be sent to the Justice Courts. The Justice Courts' funding formula should be changed to reflect their additional responsibility for civil cases and eventually for the reduction in their felony case activity.

DIVERSION OPPORTUNITIES

In some ways, it is unfortunate that Maricopa County discontinued its participation as a demonstration site in the Criminal Justice System Project since that project's ultimate goal was to help justice system leaders develop more purposeful, cost effective and coordinated systems of correctional sanctions and programs. From our interviews, we believe Maricopa County would benefit from a closer examination of its existing diversion programs and consider expanding those options for its felony cases.

RECOMMENDATION 33

After careful evaluation, Maricopa County should expand its diversion opportunities for felony defendants. Even before it expands opportunities, the County should allocate additional resources to the Pretrial Services Agency.

In addition to enhancing its sanctioning options, we believe Maricopa County should expand the staff and activities of the Pretrial Services Agency. A major challenge to the criminal justice system is to reduce pressure on the jail (i.e., overcrowding issues) and reduce the costs of incarceration. We believe that with more information available at initial appearance, jail-bed days, and thus costs, would decrease. This may have an additional benefit of increasing the Court's compliance with Rule 8 since out-of-custody defendants have longer time frames for case processing.

One of the purposes of the Criminal Justice System Project in which Maricopa County participated from 1997 through early 1999, was to develop a more coordinated system of correctional sanctions for criminal offenders. We believe the justice system should continue that effort on its own.

CLERK'S OFFICE

Data entry is done by judicial assistants and clerks. Often, we were told by practitioners, the clerks' entries were delayed, a fact that the Clerk of Court has acknowledged. Despite some recent improvements in the timeliness of data entry, minute entries are still significantly late. This is problematic since timely and accurate minute entries are the documents currently used to create attorney calendars and witness schedules; prepare for court, issue service of process, reschedule cases; and are the basis of court management statistics.

RECOMMENDATION 34

The Clerk of Court, with the support of the court, court administration and County administration, should devise and execute a crash program to bring minute entries up to date.

The Clerk of Court recognizes the backlog problem and has taken several steps to address it, including the following:

- In March 2000, the Clerk and Court formed a task force of representatives from his office, court administration, and the judiciary to address this (and other) issues.
- One outcome of the task force discussions is presented in Recommendation 35 below and may bring the greatest benefit to the backlogs in the shortest amount of time.
- In December 1999, the Clerk eliminated the shorthand requirement for deputy clerks, which has resulted in filling a majority of the early 2000 vacancies (27).
- The Clerk is working on a plan to present to the County Board of Supervisors to get resources for additional deputy clerk positions.
- The Clerk is conducting a market salary survey to determine an appropriate salary range for deputy clerks. The Clerk's Office has been losing skilled people to other agencies, especially the federal courts, and is looking at what salary levels are necessary to retain skilled staff.
- The Clerk has instituted mandatory overtime as one response to the backlog, although this has had some negative consequences in terms of staff burnout and increased requests for medical leave.
- The Clerk is looking at how the automated system MEEDS (Minute Entry Electronic Distribution System) can do more to help resolve this issue. The system is in place for the criminal courts with limited electronic distribution taking place to internal departments. Eventually, the minute entries will be processed and distributed electronically to all the major justice system agencies and to private counsel. MEEDS does already electronically docket each minute entry, resulting in saved processing time for that required step.

These efforts helped the Clerk's Office reduce the backlog in minute entries earlier in the year. Nevertheless, the increased pressure on the court to meet Rule 8 deadlines and the many steps that need to be taken to meet the challenge issued by the Supreme Court rely upon accurate information for scheduling. For this reason, unless current catch-up efforts will solve the problem in the near term, a crash program is needed to bring minute entries current.

RECOMMENDATION 35

The Clerk of Court should review the role of the courtroom clerk and the role of minute entries to identify whether the courtroom clerks' duties and/or minute etnries should be redefined.

As discussed by the Clerk / Court Task Force, there are no statutory or rule definitions of a minute entry. There is a belief by some practitioners that what currently is included in minute entries could be handled in a different way. For example, calendar dates could be taken out of minute entries, be the responsibility of other staff and shared differently with the key agencies. Also, some judges reportedly use minute entries to make lengthy rulings that might better be defined as court orders and prepared separately. A new statewide committee has been formed to address this issue.

Each judicial division has an assigned clerk who is responsible for a wide range of duties that have greatly expanded over the years. If the clerks' roles could be redefined, some of the duties could be reassigned to less skilled staff or to judicial staff, which would reduce the time frame for training and allow the Clerk of Court to distribute his resources more evenly across divisions.[51]

RECOMMENDATION 36

Once current with the minute entries, the Clerk should explore more ways to remain current. The Clerk should seek funding for a records management study

[51] The pressure to comply with Rule 8 has forced the Clerk of Court to redistribute limited staff resources to the criminal division. This has created work backlogs in other divisions of the Superior Court, notably the civil and family divisions.

which would include the current minute book entry system.

The Clerk's performance management plan for courtroom clerks assesses the production percentage for minute entries prepared and the resulting number of pages produced. The plan also evaluates the quality of those minutes, assigning a higher weight to quality than to quantity, and includes measures for exhibit accuracy and overall work conduct.

In criminal cases, MEEDS counts and reports excellent workload / backlog data. These data allow the Clerk—and the Court, which also receives weekly reports—to monitor (1) individual court clerk and hearing officer workload, (2) the timeliness of minute preparation from hearing date, and (3) the length of time from the submission of minutes by the clerk to the hearing officer until approval by the hearing officer.

It is possible that the Clerk needs additional to staff to keep the minutes up to date. However, this is only one potential response to the problem. Greater automation, developing a clear definition of a minute entry, and realigning the current duties of the courtroom clerk are other responses. We believe a records management study would help identify the merits and limitations of the range of possible responses and help identify the best response.

MANAGEMENT INFORMATION SYSTEM

Our review of previous consultant reports, our interviews, our attendance at committee meetings, and our study of how decisions about resource allocation are made indicate there is a clear consensus that data and the sharing of those data need to be improved. For example, there is disagreement among key justice system leaders regarding the accuracy of existing data. We did learn that the court's data system has been audited and approved by the State Court Administrator's Office. Yet, the data to fully manage the cases, according to many, are not there. Even if they were there, however, it is not clear they would be used because of the disagreements about data accuracy.

RECOMMENDATION 37

The Maricopa County criminal justice system should immediately create an interim case management system that presents at least the minimum data needed to monitor and manage cases. In the long term, the County should promote the development of a cooperative, integrated, automated information system which would permit the governmental entities within the criminal justice system to share appropriate information (such as the procedural status of individual cases) on a real-time basis.

Resources have been allocated to develop and fully integrate a criminal justice information system. The new system will help reduce scheduling conflicts and will improve case age inventory reporting. However, the system is apparently years away from implementation. In the interim, the County and its criminal justice agencies should review all existing data systems to optimize access and use of existing data by all criminal justice agencies.

If the justice system hopes to comply with Rule 8 deadlines, it cannot wait for the information system of the future to be implemented. Nor can it wait for partial adjustments to existing systems. Court Administration has identified and is continuing to identify the key data the court needs to manage cases better. With input from its justice agency partners, the court should identify the minimal data that are needed to manage cases well. The data should be in a format that can be efficiently used by and shared among the key stakeholders in the system.

The County's long term plan for automation should ensure the effective automation coordination of all agencies through its Chief Information Officer, require an automation plan to be developed by each agency in coordination with the others, and provide adequate funding to implement the system.

JURORS

RECOMMENDATION 38

Juror exit questionnaires should be designed and administered.

Administering exit surveys is not a common practice around the country, but is done on a limited basis in Maricopa County. Jurors are citizens and taxpayers and thus have a stake in the performance of the justice system. Many are keen observers, and because they see with fresh eyes, they sometimes see what people who are in court every day do not. We believe jurors' thoughts would be valuable information for justice system practitioners. Moreover, we believe a survey could be a useful tool to help build public support for the justice system.

BUDGETING

Based on our review, we believe there is a possible imbalance of funding in the system among criminal justice agencies. Consider the following statistics from 1989 through 1998:

- The number of judicial officers increased from 85 to 103, a 21 percent increase;
- The number of court support staff increased from 372 to 560, approximately a 51 percent increase;
- The court's budget increased from $32 to $43 million, a 34 percent increase; and
- Case filings increased from 14,742 to 24,708, a 68 percent increase.

We were unable to gather adequate statistics regarding increases in the MCPD's and MCAO's budgets, but our impression is that the staffing and budget increases have not been comparable to the increases provided to the court.

RECOMMENDATION 39

Maricopa County should work toward developing a unified budget process for the criminal justice system within a reasonable time, perhaps two to three years. Budget allocations should be made based upon an impact analysis to ensure sufficient and balanced funding to all system participants, including indigent defense.

As part of its impact analysis, Maricopa County should inquire about the level and types of support that the federal and state governments are providing to local law enforcement and prosecutors and should insist upon receiving an equitable amount of support for indigent defense services. This might, in part, take the form of granting the MCPD access to resources, training and other activities provided to law enforcement through government-sponsored programs.